

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GERD THIELEBEULE,

Plaintiffs,

ECF CASE

Case No. 04 CV 8460(RJH)

-against-

GERMANISCHER LLOYD (U.S.A.), INC. and  
GERMANISCHER LLOYD, AG,

**RULE 26(F) PROPOSED  
JOINT SCHEDULING  
REPORT**

Defendants.

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Plaintiff Gerd Thielebeule, by his attorneys, Vandenberg & Feliu, LLP, and Defendants Germanischer Lloyd (U.S.A.), Inc. and Germanischer Lloyd, AG, by their attorneys, Barry McTiernan & Moore, submit this Proposed Joint Scheduling Report pursuant to Rule 26(f) of the Federal Rules of Civil Procedure:

1. Description of the Case

a. Attorneys of record and trial attorneys

For Plaintiff: Christopher A. D'Angelo, Esq.  
Vandenberg & Feliu, LLP  
110 East 42<sup>nd</sup> Street  
Suite 1502  
New York, New York 10017  
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For Defendants: Edwin F. Lambert, Jr., Esq.  
Barry McTiernan & Moore  
2 Rector Street  
14<sup>th</sup> Floor  
New York, New York 10006  
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b. Jurisdiction is conferred by 28 U.S.C. § 1332(a)(3) which provides for original jurisdiction in the District courts over actions where the matter in controversy exceeds the sum or value of \$75,000 and is between citizens

of different States and in which citizens or subjects of a foreign state are additional parties.

c. Claims and Counterclaims

i. Plaintiff's claims:

The Employment Agreement between Plaintiff and Defendants entitled Plaintiff to various compensation which has not been paid by Defendants. Defendants' failure to pay Plaintiff all amounts due constitutes a breach of the Employment Agreement, a violation of Article 6 of the Labor Law of the State of New York, and/or a violation of the California Labor Code.

ii. Defendants' counterclaims:

Defendants have declined to pay various compensations allegedly due Plaintiff due to breaches of fiduciary duties and breach of trust by Plaintiff as well as breach of contract and by acting ultra vires. Plaintiff's claims of violation of New York State Labor Law and California Labor Code are not applicable to Defendants in this case.

d. Major legal and factual issues in the case:

- i. Whether Defendants failed to pay compensation to Plaintiff in breach of the contracts between Plaintiff and Defendants and/or in violation of Federal and State law.
- ii. Whether Plaintiff breached his corporate duties to Defendants and has damaged Defendants thereby in violation of his employment contracts and foreign laws, and is entitled to compensatory damages, punitive damages and injunctive relief.

e. Relief Sought:

- i. On All Causes of Action: Plaintiff's claims seek damages in an amount to be finally determined at trial, but not less than US \$449,514.00, as follows:

|   |              |
|---|--------------|
| Retirement compensation   | \$142,732.17 |
| Compensation for unpaid vacation days                                     | \$17,516.00  |
| Compensation for unpaid Saturdays plus<br>Federally-required overtime pay | \$67,560.00  |
| Reimbursement for trips between Algeria<br>and the United States          | \$5,653.00   |

|  |                    |
|--|--------------------|
| Unpaid extra overseas allowance  | \$103,950.00       |
| Compensation for overtime or late-hour survey hours, plus interest thereon at the statutory rate | <u>\$52,338.00</u> |
|  | \$449,514.00       |

On the Second Cause of Action: Plaintiff also seeks:

Costs and attorneys' fees

Liquidated damages equal to 25% of the total amount of the wages found to be due.

On the Third Cause of Action: Plaintiff also seeks:

Interest at the rate of 10% per annum pursuant to California Labor Code § 218.5 and California Civil Code § 3289

An additional 30 days of wages

Costs and attorneys' fees.

- ii. Defendants' counterclaims seek an accounting from Plaintiff for compensation received, gains made by Plaintiff as a result of his wrongful conduct, and expenses incurred by Defendant GLAG in the protection of its interests in Algeria in the amount of € 785,000, an injunction against Plaintiff restraining him from continuing to solicit the clients and former clients of defendants, and punitive damages in the amount of US \$1,000,000.00.

2. Proposed Case Management Plan

- a. There are no pending motions.
- b. Proposed cut-off date for joinder of additional parties: March 4, 2005
- c. Proposed cut-off date for amendment to pleadings: March 4, 2005
- d. Proposed schedule for completion of discovery:
  - i. Date for Rule 26(a)(1) disclosures: February 3, 2005
  - ii. Fact discovery completion date: September 30, 2005
  - iii. Date for Rule 26(a)(2) disclosures: August 31, 2005

- iv. Expert discovery completion date: November 4, 2005
    - (1) Date for delivery of expert reports: October 7, 2005
    - (2) Last date for expert depositions: November 4, 2005
  - e. Date for filing dispositive motions: December 4, 2005
  - f. Date for filing a final pre-trial order: December 4, 2005
  - g. Trial Schedule
    - i. A jury trial is requested.
    - ii. Probable length of trial: One week
    - iii. Case to be ready for trial: December 4, 2005
3. The parties DO NOT unanimously consent to proceed before a Magistrate Judge.
4. Status of settlement discussions:
- a. Settlement discussions have occurred.
  - b. Status of settlement discussions: Settlement discussions are ongoing.
  - c. The parties DO request a settlement conference.

Dated: New York, New York  
February 1, 2005

VANDENBERG & FELIU, LLP

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SO ORDERED:

U.S.D. J.